

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MANUEL ANTONIO GARCIA,

Plaintiff,

REPORT AND RECOMMENDATION

- v -

CV-04-4956 (NGG)(VVP)

WASTE MANAGEMENT, INC., et al.,

Defendants.
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At a hearing held on January 26, 2007, which was scheduled by the court's order dated January 17, 2006 (copy annexed), the plaintiff failed to appear and failed to provide documents and other discovery responses as ordered by the court. At the hearing, the court made factual findings on the record, which provide the basis for this recommendation that the action be dismissed. (A transcript of the hearing has been filed and is enclosed for the plaintiff *pro se*). Accordingly, for the reasons stated on the record, I hereby RECOMMEND that this action be dismissed for want of prosecution. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962). Because of the plaintiff's repeated failures to comply with directions to provide discovery, as set forth in the transcript of the hearing, I further RECOMMEND that the dismissal be with prejudice.

* * * * *

Any objections to the Report and Recommendation above must be filed with the Clerk of the Court within 10 days of receipt of this report. Failure to file objections within the specified time waives the right to appeal any judgment or order entered by the District Court in reliance on this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see, e.g., Thomas v. Arn*, 474 U.S. 140, 155, 106 S.Ct. 466, 474, 88 L.Ed.2d 435 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298 (2d Cir.), *cert. denied*, 113 S. Ct. 825 (1992); *Small v. Secretary of Health and Human Serv.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

The clerk is directed to serve a copy of this Report and Recommendation on the plaintiff at his last known address below by overnight courier:

Manuel Antonio Garcia
555 Grand Street, Apt. 1
Brooklyn, New York 11211

Viktor V. Pohorelsky
VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
February 5, 2007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MANUEL ANTONIO GARCIA,

Plaintiff,

- v -

WASTE MANAGEMENT, INC., et al.,

Defendants.
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ORDER

CV-04-4956 (NGG)(VVP)

**TO: Manuel Antonio Garcia
555 Grand Street, Apt. 1
Brooklyn, New York 11211**

The court is advised that you have failed to comply with the court's orders at the last conference on November 28, 2006. The record also reflects that you have previously failed to provide discovery in accordance with court orders. You have previously been warned that your continued failure to abide by the court's directions has caused the defendants to incur unnecessary expense and the court to expend unnecessary time on this matter.

A hearing concerning your failure to comply with court orders will be held on **January 26, 2007 at 12:00 noon** in Courtroom 13A of the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York. **You are required to attend the conference in person.**

You are also required to bring with you to the hearing the following documents:

1. Written responses to the defendant's document requests;
2. Written responses to the defendant's interrogatories;
3. All documents requested by the defendant's document requests.

If you fail to appear or fail to produce the above documents at the hearing, your case will be dismissed.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
January 17, 2007